

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Deregulation of the Tecopa Pupfish**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service removes the Tecopa pupfish (*Cyprinodon nevadensis calidae*) from the list of Endangered and Threatened species, based on a determination, after review of all available data, that the subspecies is extinct. In 1972, its original discoverer reported that it was no longer present in two springs where it was first collected, and extensive 1977 State of California surveys of potential habitats in the same river system produced no evidence that any additional stocks exist. This action constitutes formal Service recognition of Tecopa pupfish extinction, and discontinues protections for the fish and its habitat accorded by the Endangered Species Act of 1973, as amended.

**DATE:** This rule becomes effective on February 16, 1982.

**ADDRESSES:** Questions concerning this action may be addressed to the Director, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235-2771).

**SUPPLEMENTARY INFORMATION:****Background**

*Cyprinodon nevadensis calidae* was described in 1948 by Dr. Robert Rush Miller from outflow streams of two springs, north and south Tecopa Hot Springs—about 10 yards apart on the east side of the road leading north from Tecopa, California. Considerably larger scales and several proportional and other differences distinguish this fish from the Amargosa River pupfish subspecies (*C. nevadensis amargosae*), which then as now was widespread and locally common in parts of the river system and in other springs in and near

Tecopa. Available data on the Tecopa pupfish in 1970 indicated that it was Endangered by habitat alteration and introduction of exotic fishes, notably bluegill sunfishes and mosquito fish. In 1970, it was added to both Federal and California State Endangered species lists. By 1972, it was reported to no longer occur at the type locality, and surveys in 1977 failed to locate any other populations.

A proposal to remove the Tecopa pupfish from the list of Endangered species was published in the *Federal Register* on July 3, 1978 (43 FR 2884). This proposal summarized biological and environmental evidence indicating that the fish is extinct, and solicited comments, suggestions, objections, or information from any interested persons. A letter was sent to the Governor of California on July 7, 1978, notifying him of the proposed rule. As indicated below, the California Department of Fish and Game concurred with the available evidence, but proposed to continue surveying potential habitats until 1979, after which removal from the list was recommended if no populations were discovered.

#### Summary of Comments and Recommendations

All comments relating to the possible existence of the Tecopa pupfish, before and subsequent to the 1978 proposed rule, have been considered in the present status determination. A total of eight comments related specifically to the delisting proposal. Seven of these came from concerned citizens, and the Director of the California Department of Fish and Game responded on behalf of his agency and the Governor of California. All seven private citizens responding considered delisting inadvisable. Six respondents had observed pupfishes, five of them in the vicinity of Tecopa, which they logically assumed were Tecopa pupfish. In particular, populations existing in certain bathhouse outflows, and transplanted from them to other nearby springs, are similar in general appearance to the listed form, but biologists generally concur that all specimens examined in the area since 1970 represent the unlisted subspecies *amargosae*. Continuing concern and conservation efforts for that subspecies are justified, because its range and habitat are also limited. At least partly because of the listing of its less fortunate relative, the surviving subspecies and its habitat needs have been considered locally in planning and development of the region, and it is not present by foreseen to become Endangered.

The Director of the California Department of Fish and Game summarized the status findings of his agency, stating that Tecopa pupfish were either extinct or at such low population densities that sampling methods were unproductive. He indicated that a lookout for possible survivors would continue whether or not the species was delisted. In a 1978 report, the Department recommended delisting after 1979 if no populations were found.

#### Summary of Status Findings

After a thorough review and consideration of all available data, the Director has determined that *Cyprinodon nevadensis calidae* is extinct, and no longer requires protection pursuant to the Endangered Species Act of 1973, as amended. This determination is based on passage of time judged sufficient to insure that the fish is in fact extinct. Should evidence to the contrary be forthcoming at a later time, the action is reversible.

The Service's listing regulations at 50 CFR 424.11(b) state:

A Species shall be listed if the Director determines on the basis of the best scientific and commercial data available to him after conducting a review of the species' status that the species is Endangered or Threatened because of any one or more combinations of the following factors:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;
2. Utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it;
3. Disease or predation;
4. Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat; and
5. Other natural or manmade factors affecting its continued existence.

The regulations further state, in § 424.11(d), that:

The factors for removing a species from the list are those in paragraph (b) of this section. The data to support such removal must be the best scientific and commercial data available to the Director to substantiate that the species is neither Endangered nor Threatened for one or more of the following reasons:

1. *Extinction*—Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly insure that the species is in fact extinct.

2. *Recovery of the species*—The principal goal of the Service is to return listed species to a point at which

protection under the Act is no longer required. A species may be delisted if evidence shows that it is no longer Endangered or Threatened.

3. *Original data for classification in error*—Subsequent investigations may produce data that show that the best scientific or commercial data available at the time the species was listed were in error.

The first status survey of the Tecopa pupfish after its listing was conducted in 1972 by Dr. Robert R. Miller, the original discoverer. He reported that all efforts to locate populations in the springs originally inhabited and other springs nearby were unsuccessful.

In 1977, an extensive survey of 44 aquatic habitats in the Tecopa-Hot Springs area of Inyo County, California, was conducted by Douglas Selby for the California Fish and Game Department. *Cyprinodon nevadensis amargosae* was found to be locally abundant in some of these habitats, rare in some, and absent from some. The upper outflow stream from Tecopa Hot Springs, the type locality of the Tecopa pupfish, *C. nevadensis calidae*, in the southern half of section 33, T21N R7E, was reported to contain no fish. This apparently resulted from rechanneling and combining the two hot spring outflows in 1965, which probably increased both current speed and downstream temperatures to levels unsuitable for pupfish survival or propagation or both. At the time these actions occurred, only a few persons were aware of the uniqueness and probable restricted distribution of this fish.

#### References Cited

- California Department of Fish and Game. 1978. At the Crossroads, 1978, a Report on California's Endangered and Rare Fish and Wildlife. State of California—Resources Agency, Sacramento, CA. 103 pp.
- Miller, R.R. 1948. The cyprinodont fishes of the Death Valley System of eastern California and southwestern Nevada. Misc. Publ. Mus. Zool. Univ. Mich. No. 68. 155 pp.
- Selby, D.A. 1977. Report on the aquatic systems of the Tecopa-Shoshone area of the Death Valley System: fish, invertebrate, and habitat status. Unpublished report to California Dept. of Fish and Game. 94 pp.

#### Effects of the Rule

The rule removes the Tecopa pupfish from the list of Endangered and Threatened Wildlife and Plants, and thereby discontinues all protections accorded the fish and its habitat under provisions of the Endangered Species Act of 1973, as amended.

An Environmental Assessment was prepared in conjunction with this rule. It is on file in the Service's Office of Endangered Species, 1000 North Glebe

Road, Arlington, Virginia, and may be examined by appointment during regular business hours. This assessment is the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500-1508.

**Note.**—The Department of Interior has determined that this not a major rule and does not require preparation of a Regulatory Impact Analysis under Executive Order 12291. The Department has also determined, in accordance with the Regulatory Flexibility Act, that this rule will not have a significant economic effect on a substantial number of

small entities. The Service is not aware of negative impacts on small entities from the delisting.

#### Primary Author

The primary author of this rule is Dr. George E. Drewry, Office of Endangered Species, Arlington, Virginia (703/235-1975).

#### Regulations Promulgation

### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations is amended, as set forth below:

#### § 17.11 [Amended]

1. Amend the table in § 17.11(h) by removing the Tecopa pupfish (*Cyprinodon nevadensis calidae*) from the List of Endangered and Threatened Wildlife and Plants.

(Pub. L. 93-205, 87 Stat. 684; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1241 (16 U.S.C. 1531, et seq.))

Dated: October 30, 1981.

J. Craig Potter,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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